

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

EMILIO CHASE,

Petitioner,

v.

**Civil action no. 3:05CV79
Criminal action no. 3:04CR42
(Judge Broadwater)**

UNITED STATES OF AMERICA,

Respondent.

REPORT AND RECOMMENDATION

On July 11, 2005, the *pro se* petitioner, at inmate at the Eastern Regional Jail, filed a Motion Under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. This matter is pending before me for initial review and report and recommendation pursuant to Order of Referral issued by the Honorable W. Craig Broadwater, United States District Judge.

The petitioner pled guilty to distribution of crack within 1,000 feet of a school. On June 22, 2005, the Court sentenced the petitioner to 210 months imprisonment. Subsequently, on July 14, 2005, the petitioner filed a notice of appeal.

The petitioner's §2255 motion is premature because his appeal is pending before the Fourth Circuit Court of Appeals. See Walker v. Connor, 2003 WL 21660483 (4th Cir. 2003).¹ Thus, the undersigned recommends that the petitioner's 2255 motion be denied and dismissed without prejudice.

¹Pursuant to Fourth Circuit Local Rule 36(c), which disfavors citation of unpublished opinions, a copy of this unpublished opinion is attached.

Any party may file within ten (10) days after the receipt of this Recommendation with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable W. Craig Broadwater, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation.²

The Clerk of Court is directed to mail a copy of this Recommendation to the *pro se* petitioner.

Dated: September 26, 2005

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE

² 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir.), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).